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[34-12D-1](#). Definition of terms.

Terms used in this chapter mean:

- (1) "Attending physician," the physician who has primary responsibility for the treatment and care of the patient;
- (2) "Declaration," a writing executed in accordance with the requirements of [§ 34-12D-2](#);
- (3) "Health care provider," any licensed health care facility or any person, corporation, or organization licensed, certified, or otherwise authorized or permitted by law to administer health care;
- (4) "Life-sustaining treatment," any medical procedure or intervention that, when administered to a patient, will serve only to postpone the moment of death or to maintain the patient in a condition of permanent unconsciousness. The term does not include the provision of appropriate care to maintain comfort, hygiene and human dignity, the oral administration of food and water, or the administration of any medication or other medical procedure deemed necessary to alleviate pain;
- (5) "Person," an individual trust, estate, trust, limited liability company, partnership, association, joint venture, government, governmental subdivision, or agency, or any other legal or commercial entity;
- (6) "Physician," an individual licensed to practice medicine in this state;
- (7) "Terminal condition," an incurable and irreversible condition such that, in accordance with accepted medical standards, death is imminent if life-sustaining treatment is not administered, or a coma or other condition of permanent unconsciousness that, in accordance with accepted medical standards, will last indefinitely without significant improvement and in which the individual is unable to communicate verbally or nonverbally, demonstrates no purposeful movement or motor ability, and is unable to interact purposefully with environmental stimulation.

Source: SL 1991, ch 273, § 1; SL 1994, ch 351, § 57; SL 2007, ch 193, § 1.

[34-12D-2](#). Declaration--Requirements to execute--Artificial nutrition and hydration.

A competent adult may at any time execute a declaration governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant, or by another at the declarant's direction, and witnessed by two adults, or by a notary public who shall thereafter notarize the declaration.

A declaration must state the declarant's preferences regarding the provision, withholding, or withdrawal of artificial nutrition and hydration.

If the declaration does not state the declarant's preferences regarding the provision, withholding, or withdrawal of artificial nutrition and hydration, any determination regarding the provision, withholding, or withdrawal of artificial nutrition and hydration is governed by the laws of this state that apply in the absence of a declaration.

Source: SL 1991, ch 273, § 2; SL 2023, ch 115, § 1.

[34-12D-3](#). Declaration--Sample form.

A declaration may, but need not, be in the following form:

LIVING WILL DECLARATION

This is an important legal document. A living will directs the medical treatment you are to receive in the event you are in a terminal condition and are unable to participate in your own medical decisions. This living will may state what kind of treatment you want or do not want to receive.

Prepare this living will carefully. If you use this form, read it completely. You may want to seek professional help to make sure the form does what you intend and is completed without mistakes.

This living will remains valid and in effect until and unless you revoke it. Review this living will periodically to make sure it continues to reflect your wishes. You may amend or revoke this living will at any time by notifying your physician and other health care providers. You should give copies of this living will to your family, your physician, and your health care facility. This form is entirely optional. If you choose to use this form, please note that the form provides signature lines for you, the two witnesses whom you have selected, and a notary public.

TO MY FAMILY, HEALTH CARE PROVIDER, AND ALL THOSE CONCERNED WITH MY CARE:

I, _____, direct you to follow my wishes for care if I am in a terminal condition, my death is imminent, and I am unable to communicate my decisions about my medical care.

With respect to any life-sustaining treatment, I direct the following:

(Initial only one of the following options. If you do not agree with either of the following options, space is provided below for you to write your own instructions.)

- ☐ If my death is imminent or I am permanently unconscious, I choose not to prolong my life. If life sustaining treatment has been started, stop it, but keep me comfortable and control my pain.
- ☐ Even if my death is imminent or I am permanently unconscious, I choose to prolong my life.
- ☐ I choose neither of the above options, and here are my instructions should I become terminally ill and my death is imminent or I am permanently unconscious:

_____	_____
_____	_____
_____	_____
_____	_____

Artificial Nutrition and Hydration: food and water provided by means of a tube inserted into the stomach or intestine or needle into a vein.

With respect to artificial nutrition and hydration, I direct the following:

- (Initial only one)
- ☐ If my death is imminent or I am permanently unconscious, I do not want artificial nutrition and hydration. If it has been started, stop it.
- ☐ Even if my death is imminent or I am permanently unconscious, I want artificial nutrition and hydration.

Date: _____ (your signature) _____

(your address) _____ (type or print your signature)

The declarant voluntarily signed this document in my presence.

Witness _____
Address _____
Witness _____
Address _____

On this the _____ day of _____, the declarant, _____, and witnesses _____, and _____ personally appeared before the undersigned officer and signed the foregoing instrument in my presence. Dated this _____ day of _____, _____.
_____, Notary Public

My commission expires: _____

Source: SL 1991, ch 273, § 3; SL 2007, ch 193, § 2.

[34-12D-4](#). Multiple documents--Resolving conflicts--Participation by attorney in fact.

If an individual has executed both a declaration and a durable power of attorney, the later executed document shall control to the extent that its provisions conflict with the provisions of the earlier executed document. However, nothing in this chapter may be construed to create a presumption that an attorney in fact may not participate in the implementation of a declaration.

Source: SL 1991, ch 273, § 4.

[34-12D-5](#). When declaration becomes operative.

A living will declaration becomes operative when the declarant is determined by the attending physician to be in a terminal condition, death is imminent, and the declarant is no longer able to communicate decisions about medical care.

Source: SL 1991, ch 273, § 5; SL 2007, ch 193, § 3.

[34-12D-6](#). Decisions regarding life-sustaining treatment--Rights of qualified patient.

A qualified patient may make decisions regarding life-sustaining treatment so long as the patient is able to do so.

Source: SL 1991, ch 273, § 8.

[34-12D-7](#). Entry of declaration into medical record.

Upon determining that a declarant is in a terminal condition, the attending physician who knows of a declaration shall record the determination and the terms of the declaration in the declarant's medical record.

Source: SL 1991, ch 273, § 7.

[34-12D-8](#). Revocation of declaration--Medical record to contain revocation.

A declarant may revoke a declaration at any time and in any manner without regard to the declarant's mental or physical condition. A revocation is effective upon communication to the health care provider. The health care provider shall make the revocation a part of the declarant's medical record.

Source: SL 1991, ch 273, § 6; SL 2007, ch 193, § 4.

[34-12D-9](#). Providing for patient's comfort and related needs--Responsibility of health care provider.

This chapter does not affect the responsibility of any health care provider to provide treatment when necessary to alleviate pain or to provide for the patient's comfort, hygiene, or human dignity.

Source: SL 1991, ch 273, § 9; SL 2007, ch 193, § 5.

[34-12D-10](#). Treatment of pregnant woman notwithstanding declaration.

Notwithstanding a declaration made pursuant to this chapter, life-sustaining treatment and artificial nutrition and hydration shall be provided to a pregnant woman unless, to a reasonable degree of medical certainty, as certified on the woman's medical chart by the attending physician and one other physician who has examined the woman, such procedures will not maintain the woman in such a way as to permit the continuing development and live birth of the unborn child or will be physically harmful to the woman or prolong severe pain which cannot be alleviated by medication.

Source: SL 1991, ch 273, § 10.

[34-12D-11](#). Withdrawal or withholding of life-sustaining treatment--Responsibilities of health care provider.

A health care provider need not participate in the withdrawal or withholding of life-sustaining treatment. However, a health care provider electing for any reason not to participate in the withholding or withdrawal of life-sustaining treatment shall make a reasonable effort to locate and to transfer the declarant to a physician or health care provider willing to honor the declaration.

Source: SL 1991, ch 273, § 11; SL 2007, ch 193, § 6.

[34-12D-12](#). Providing treatment, artificial nutrition, and hydration--Responsibilities of health care provider.

If an individual's declaration contains a directive to provide treatment or artificial nutrition and hydration under any circumstances, any health care provider who has responsibility for the treatment and care of the individual must provide the directed treatment or artificial nutrition and hydration in those circumstances so long as it is technically feasible. A health care provider who objects to providing such treatment may instead transfer the individual to a health care provider willing to honor the declaration, but must continue to provide the treatment or care until the transfer is effectuated.

Source: SL 1991, ch 273, § 11A; SL 2007, ch 193, § 7.

[34-12D-13](#). Immunity from civil or criminal liability, and from professional discipline.

A health care provider is not subject to civil or criminal liability or to professional disciplinary action for giving effect to a declaration, absent actual knowledge of its revocation, for determining that a terminal condition does or does not exist or for declining to give effect to a declaration under [§ 34-12D-11](#).

Source: SL 1991, ch 273, § 12; SL 2007, ch 193, § 8.

[34-12D-14](#). Withdrawal or withholding of treatment neither suicide or homicide.

Death resulting from the withdrawal or withholding of life-sustaining treatment in accordance with this chapter does not constitute, for any purpose, a suicide on the part of the declarant or a homicide on the part of the attending physician or other health care providers.

Source: SL 1991, ch 273, § 13; SL 2007, ch 193, § 9.

[34-12D-15](#). Withdrawal or withholding of treatment--Effect upon life insurance or annuity.

The making of a declaration pursuant to this chapter does not affect the sale, procurement, or issuance of a policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity is not legally impaired or invalidated by the withdrawal or withholding of life-sustaining treatment from an insured, notwithstanding any term to the contrary.

Source: SL 1991, ch 273, § 14.

[34-12D-16](#). Insurer or health-care provider may not prohibit or require declaration.

A person may not prohibit or require the execution of a declaration as a condition for being insured for, or receiving, health-care services.

Source: SL 1991, ch 273, § 15.

[34-12D-17](#). Revocation of or failure to execute declaration--No presumption created concerning intent.

This chapter creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withdrawal, or withholding of life-sustaining treatment in the event of a terminal condition.

Source: SL 1991, ch 273, § 16.

[34-12D-18](#). Patients able to make decisions regarding medical care--Effect upon rights.

This chapter does not affect the right of a patient to make decisions regarding the use of life-sustaining treatment, so long as the patient is able to do so, or impair or supersede a right or responsibility that a person has to effect the withdrawal or withholding of medical care.

Source: SL 1991, ch 273, § 17.

[34-12D-19](#). Health care provider not required to deviate from accepted medical standards.

This chapter does not require a physician or other health care provider to take action contrary to accepted medical standards.

Source: SL 1991, ch 273, § 18; SL 2007, ch 193, § 10.

[34-12D-20](#). Mercy-killing, euthanasia, suicide, and assisted suicide not condoned.

This chapter does not condone, authorize, or approve mercy-killing or euthanasia, suicide or assisted suicide.

Source: SL 1991, ch 273, § 19.

[34-12D-21](#). Assumption as to valid declaration permissible.

In the absence of actual knowledge to the contrary, a health care provider may assume that a declaration complies with this chapter and is valid.

Source: SL 1991, ch 273, § 20; SL 2007, ch 193, § 11.

[34-12D-22](#). Validity of declaration--Declarations executed prior to July 1, 1991.

A declaration which meets the execution requirements of the jurisdiction where the declarant was then a resident, the execution requirements of the jurisdiction where executed, or the execution requirements of this chapter, is valid for purposes of this chapter, even if executed prior to July 1, 1991.

Source: SL 1991, ch 273, § 21.

[34-12D-23](#). Health care professional--Knowledge and purpose required for conviction of aiding and abetting suicide.

Any licensed health care professional who administers, prescribes, or dispenses medications or procedures to relieve another person's pain or discomfort, even if the medication or procedure may hasten, or increase the risk of, death, does not violate [§ 22-16-37](#), unless the medications or procedures are knowingly administered, prescribed, or dispensed with a purpose to cause death. Any licensed health care professional who withholds or withdraws a life-sustaining procedure, in compliance with chapter [34-12D](#) or in accordance with reasonable medical practice, does not violate [§ 22-16-37](#).

Source: SDCL [§ 22-16-37.1](#); SL 2005, ch 120, §§ 168, 170.

[34-12D-24](#). Standing to bring injunctive relief against person believed to be about to assist in suicide.

A cause of action for injunctive relief may be maintained against any person who is reasonably believed to be about to violate or who is in the course of violating [§ 22-16-37](#) by any person who is:

- (1) The spouse, parent, child, sibling, legally appointed guardian, or conservator of the person who would commit suicide;
- (2) Entitled to inherit under the laws of intestate succession from the person who would commit suicide or the beneficiary under a life insurance policy of the person who would commit suicide;
- (3) Any health care provider of the person who would commit suicide;
- (4) Any public official with appropriate jurisdiction to prosecute or enforce the laws of this state.

Source: SDCL [§ 22-16-37.2](#); SL 2005, ch 120, §§ 169, 170.

[34-12D-25](#). Cause of action for compensatory and punitive damages for assisting suicide.

Any person given standing by subdivision [34-12D-24](#)(1) or (2) or the person who would have committed suicide, in the case of an attempt, may maintain a cause of action against any person who violates or attempts to violate [§ 22-16-37](#) for compensatory damages and punitive damages. An action under this section may be brought whether or not the plaintiff had prior knowledge of the violation or attempt.

Source: SDCL [§ 22-16-37.3](#); SL 2005, ch 120, § 170.

[34-12D-26](#). Attorney's fees to plaintiff in assisted suicide action.

Reasonable attorney's fees shall be awarded to the prevailing plaintiff in any civil action brought pursuant to [§ 34-12D-24](#) or [34-12D-25](#).

Source: SDCL [§ 22-16-37.4](#); SL 2005, ch 120, § 170.

[34-12D-27](#). Licensing board notified of assisted suicide violation.

Any court shall notify the appropriate licensing board in any case in which a licensed health care professional:

- (1) Is convicted of a violation of [§ 22-16-37](#);
- (2) Has been cited for contempt of court for violating an injunction issued under [§ 34-12D-24](#); or
- (3) Has been subject to an assessment of damages under [§ 34-12D-25](#).

Source: SDCL [§ 22-16-37.5](#); SL 2005, ch 120, § 170.

[34-12D-28](#). Revocation of license for assisted suicide violation.

Any professional licensing board authorized pursuant to Title 36 may, subject to the procedures set out in Title 36, suspend or revoke the license of any licensed health care professional who:

- (1) Is convicted of a violation of [§ 22-16-37](#);
- (2) Has been cited for contempt of court for violating an injunction issued under [§ 34-12D-24](#); or
- (3) Has been subject to an assessment of damages under [§ 34-12D-25](#).

Source: SDCL [§ 22-16-37.6](#); SL 2005, ch 120, § 170.

[34-12D-29](#). Licensed health care professional defined.

For the purposes of §§ [34-12D-23](#) to [34-12D-28](#), inclusive, the term, licensed health care professional, means any physician, surgeon, podiatrist, osteopath, physician assistant, nurse, certified nurse practitioner, certified nurse midwife, clinical nurse specialist, certified registered nurse anesthetist, dentist, or pharmacist licensed pursuant to Title 36.

Source: SDCL [§ 22-16-37.7](#); SL 2005, ch 120, § 170; SL 2007, ch 193, § 12.